Diese Website verwendet Cookies von Google, um Dienste anzubieten und den Traffic zu analysieren. Deine IP-Adresse und dein User-Agent werden zusammen mit Messwerten zur Leistung und Sicherheit für Google freigegeben. So können Nutzungsstatistiken generiert, Missbrauchsfälle erkannt und behoben und die Qualität des Dienstes gewährleistet werden.

WEITERE INFORMATIONEN OK

Saturday, July 04, 2009

Political lessons

I often get asked to provide an overview of my political ideas. There are so many elements to my ideas -- the importance of coercion and security and how to reconcile coercion with the substantive common law principle of non-initiation of force, the unique and crucial nature of procedural law, the role of low exit costs in enabling freedom and motivating the creation of good law, good vs. bad legal competition, the use (and intellectual recovery, where necessary) of highly-evolved or promising ideas such as political property rights, choice of law and forum, separation of duties with checks and balances, limits on delegation, "smart" (technologically codified and enforced) laws, and so on -- that it's impossible to write a summary article. Therefore this post is more in the "link farm" style.

There are hundreds of pages of reading material here. Which you should tackle depends on which areas you disagree with or don't understand.

Utopians -- those who think government is or could be an institution based on voluntary agreements or peace, or anarchists who think voluntary or peaceful interactions would dominate in the absence of legal procedure based on coercion -- and those who don't know how such utopianism is readily rebutted by real history, should first read my articles about the central role coercion has, does, and will play in human interaction:

Hampton Sides Sheds Light on Olson and Coase

The Coase Theorem is False -- Contracts Depend on Tort Law

The next set everybody should read, as you can't understand politics without understanding the crucial role of legal procedure, and especially jurisdiction (a way to quickly evaluate any proposed new form of government or legal system: ask the proposer how arrest is distinguished from kidnapping, and search and seizure from trespassing and theft -- if they can't give a good answer, the proposal is based on ignorance and you need not waste any more of your time on it):

Why Legal Procedure Is Central to Politics

Three Kinds of Jurisdiction

Exit and Freedom

About Me

Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

"Reading material that is eclectic, challenging and endlessly fascinating." -- Sean McGrath, Propylon

"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

View my complete profile

Property In Everything

Jurisdiction as Property

Political Property and the Evolution of Liberty

Unbundled Jurisdiction and Exit Costs

Government for Profit

Semayne's Case: Liberty of the House

Next are some lessons from the Roman style of government -- based on agency rather than political property rights. (This kind of government has dominated Western political thought -- if you have not read the previous list of articles it is probably the only way you can imagine that legal systems can work):

Democracy as Regular Rebellion

The Principle of Least Authority

Separation of Powers and Credible Commitment

Executive Power and the Interpretation of Laws

Unpredictable Elections

Those interested in the United States Constitution -- whether you want to emulate it, interpret it, revise it, or trash it -- will find the following of use:

Corporate Origins of the United States

Charters and Judicial Review

Due Process Property Rights

Civil Liberties and the Forever War

Comments on the United States Constitution (i, ii, iii)

For those who want to explore the use of technology to help codify and enforce law:

Wet Code and Dry

Blog Archive

- ► 2018 (1)
- ► 2017 (3)
- ► 2016 (4)
- ► 2015 (3)
- ► 2014 (3)
- ► 2013 (3)
- ► 2012 (8)
- ► 2011 (12)
- ► 2010 (9)
- ▼ 2009 (29)
  - ► November (3)
  - ► October (6)
  - ► September (3)
  - ► August (1)
  - ▼ July (1)
    - Political lessons
  - ► June (3)
  - ► May (6)
  - ► April (3)
  - ► January (3)
- ► 2008 (55)
- ► 2007 (47)
- ► 2006 (130)
- ► 2005 (44)

Security and the Burden of Lawsuit

Smart Contracts

Secure Property Titles with Owner Authority

A Formal Legal Drafting Language

Devices for Controlling Property

Liar-Resistant Government

For those who want to explore some related ideas on philosophy and history:

The Irreducible Complexity of Society

Objective versus Intersubjective Truth

Hermeneutics

An Introduction to Algorithmic Information Theory

Book Consciousness

Security and the Origins of Agriculture

Patterns of Integrity

Origins of the Joint-Stock Corporation

Finally, some notes on political action:

Ten Ways to Make a Political Difference

Feel free to comment or ask questions about any of these or other of my writings here.

Posted by Nick Szabo at 11:36 AM

13 comments:

Tenius said...

Nick, from what I read, my major objection to your approach "(tort)law *ex machina*" is exactly that it comes out *ex machina*. Or to put it in other words, it is just assumed.

Will Robinson and Friday be unable to cooperate because of a missing tort law?

And a minor suggestion. You may want to delete the spam in comment sections of your posts and (optionally) disable the comments on them.

11:57 PM

nazgulnarsil said...

your criticism of contract law based systems ignores reputation effects acting as deterrent of coercive bargaining. this seems a fairly critical component.

12:46 AM

nick said...

Tenius: Tort law -- or more precisely, at least enough tort and property law to enforce political property rights -- requires a court and enforcement system that has, at any substantial scale of society, never been and cannot be generated out of voluntary contracts (which absent an already existing legal process are unenforceable), but are rather coercively imposed, for example by war, embargo, or threat of same leading to a treaty, by vote imposed on a dissenting minority, or by similarly coercive acts. "Social contracts" are the imaginary *deus ex machina*, coercive imposition is the historical reality, and my article listed above "The Coase Theorem is False" explains rigorously why this has been so. Or you can just read history and reach the same conclusion -- it shouldn't take long to realize that history is a mind-numbing repetition, millions of times over, of law being imposed by conquest and other coercive acts.

This is not to say that the use of choice of law and choice of forum clauses cannot be greatly increased, especially for relational laws (contract, family, and the like), increasing *ex ante* legal competition (the good kind of legal competition) in these areas to substantial beneficial effect, assuming an already highly evolved legal system.

I also highly recommend reading real history rather than fiction like *Robinson Crusoe* written by people like Daniel Defoe who took for granted the luxury of a sophisticated tort and property law. For example, read about some real long-term castaways, like those on Pitcairn Island, where the men slaughtered each other, apparently fighting over the women, until only two out of the original fifteen male castaways were left.

nazgulnarsil: Reputational effects in a coercive environment tend to be about who is the tougher guy, not who is the nicer guy. For reputational effects to reward primarily good voluntary behavior requires a sophisticated legal system that punishes coercive behavior, such as the common law and its principle of non-initiation of force. Absent that, the tough guys -- and being more ready to initiate force tends to make for a tougher reputation -- are the ones with the most desirable reputations. Tough generals, tough mafia bosses, tough gang leaders, depending on the mileau. Far from deterring coercion, absent a good legal system reputation encourages coercion. Exactly how have reputational effects detered Somali pirates, for example? To the extent the pirates have a reputation among their victims for being tough and ruthless, they can demand higher ransoms. Without well-enforced law against coercion reputation generally rewards greater coercion.

Much more about the historical reality of how coercion dominates anarchic environments can be found in my first-listed article above, "Hampton Sides Sheds Light on Olson and Coase." I also highly recommend Mancur Olson's account, in his book *Power and Prosperity*, about anarchy and bandits, and how stationary bandits are generally much less harmful than roving bandits. (I'd add that not just "government" generically, but specifically political property rights and Roman hierarchical government are two of many possible outcomes of stationary banditry -- but roving bandits can also win or exert a long-term baleful influence, for example the long-term dominance by mobile conquerors in the European Dark Ages).

2:45 AM

nazgulnarsil said...

This comment has been removed by the author.

4:39 PM

nazgulnarsil said...

thanks for the suggestion, will be picking up several of Olsen's books.

you're quite right. when the majority don't strongly object to coercion (as they obviously do not)there is no incentive to avoid it. this is fairly depressing. the only avenue I see out of chimpanzee politics is an overall increase in IQ's or the emergence of a benevolent singleton.

4:40 PM

nick said...

The good news is that one can develop a largely non-coercive system out of a coercive one. Its origin was necessarily coercive and it remains "locally coercive" insofar as its procedural law involves acts like legal arrest, search and seizure, etc., but its substantive law is largely non-coercive, i.e. based on the libertarian principle of non-initiation of force.

Not utopia, as the traditional English common law (evolved by judges over several hundred years of court cases) largely followed this pattern, and indeed (if we ignore modern legislation) mostly still does.

Think of protocol layers (or if you don't know some computer network design, think of the layers that go into building a road: e.g. dirt, gravel, asphalt). The bottom layer is legal procedure, protected by a military where necessary, and involves some coercive acts. But it supports a layer of substantive law -- tort, property, contract, and the like -- that can and should enforce non-coercion between people.

Indeed, the moral principle of non-initiation of force, far from being a possible *basis* of society as Murray Rothbard and David Friedman would have it, is a sophisticated *outcome* of long legal evolution and a highly involved legal procedure that itself cannot stick to that principle: it coerces people to a certain extent so that they will not coerce each other to a much greater extent.

P.S. sorry to nit, but to avoid searching errors it's Mancur Olson with an "o".

The main things to recommend in Olson are (1) his critique of Coase (although IMHO my own critique is more rigorous, but it was inspired by Olson's), and (2) his "roving bandit" vs. "stationary bandit" analysis of coercive outcomes in a lawless anarchy. Both of these can be found in his *Power and Prosperity*. Otherwise his analysis is blandly conventional, focusing on "democracies" and their supposed superiority (he is entirely unconvincing in trying to explain why democracies are supposedly economically superior to monarchies, for example -- his original "stationary bandit" seems to work best as a monarch, and not so well when figures in government change more often, when majorities can rob minorities, etc.)

Of course, we and history have seen big problems trying to keep the legal procedure layer to stick to enforcing substantive non-coercion and not turn into a modern "redistributive" government on the one hand or an oppressive tyranny on the other. There's no avoiding study of real constitutions and real legal systems in order to figure out where mistakes have been made so that we can do better next time.

7:44 PM

nazgulnarsil said...

having a non-coercive system that operates only at the whim of those with the big sticks seems a low bar to set. As far as written constitutions go, they don't seem all that useful in the face of changing culture. If you make them too malleable they reflect popular opinion, too rigid and they fail. Inductive reasoning can not be applied to them, only deductive and abductive.

I don't see how a decent constitution or legal system can emerge without market competition.

Re: Olson, his collective action book is a democracy apologetic? that's too bad, sounded okay from the amazon reviews.

12:01 AM

nick said...

a non-coercive system that operates only at the whim of those with the big sticks

Many long-practiced arts involve many ways to divide up the big sticks, whose disparate wielders force each other to follow rules, such that "whim" is minimized. Many of these arts are dealt with in the above-listed articles.

I don't see how a decent constitution or legal system can emerge without market competition.

The problem is that the good kind of (ex ante) legal competition in politics, as opposed to the very harmful (ex post, war, etc.) kinds -- depends on an already existing and fairly secure legal process. So there has to be a protocol layer of legal process that does not depend on ex ante competition. It should, like a good protocol layer, do only the minimum necessary (create a good substantive law enforcing non-coercion), and no more. For example, following an idealized version pre-Tudor English law, a central judiciary could adjudicate issues of political property rights and nothing else (i.e. a Supreme Court that adjudicates no substantive law at all, only procedural, in which the only "legislation" consists of granting political property rights,
and all other powers belong to the several owners of political property rights. Note that this is very different from the U.S. Constitution and is far more minimal that the typical minarchist's "night watchman state" but is by no means the supposedly non-coercive anarcho-capitalism postulated by Rothbard and Friedman. Although I do give the anarcho-caps props for inspiring me to study polycentric legal institutions. Alas, I have discovered that they severely misunderstand these institutions -- they are generally very far from being based on voluntary contracts).

This minimalist view runs up against the basically totalitarian view of modern democracy in which "the people" are "sovereign", usually translated as effectively meaning that "their representatives" can commit almost any kind of coercion unconstrained. (Said doctrine derived from the totalitarian Roman law, in which the emperor's, rather than "the people's", will was law).

In other words, it's the Romanist ideology on which we were raised that dictates that law degrades to "whim". Our reality under this ideology is not the general historical reality, as a number of very good systems that far more closely approached ideals of "the rule of law not of man" and substantive non-coercion have existed (and many of their forms remain, albeit often well known only to legal scholars not political scientists and other kinds of scholars, who still largely operate within the Romanist ideology of universities and are ignorant of traditional legal forms and especially ignorant of political property).

Both the modern view and anarcho-capitalism take the destructive Romanist "all or nothing" approach to coercion. The real answer is to recognize the reality of coercion and then pit it against itself to create an emergent system that minimizes coercion.

Olson is, alas, a democracy booster (as are most recent scholars -- that is how they get their positions), but his bandit theory of lawless anarchy is nevertheless the best theory out there about how anarchy works (and degrades into banditry, of which stationary bandits are preferable to roving). It works very well to describe for example Somalia, in which we've seen sub-national stationary bandits (warlords) emerge against the domestic population and roving bandits (pirates) against foreign. It also explains the Dark Ages (rise of the roving banditry of nomadic warriors) and much else in history and pre-history. Nothing else comes close to the explanatory power of Olson's bandit theory in explaining lawless/prelegal politics. Of course it can be improved upon, e.g. by adding in political property rights and a potentially wide variety of other coercive forms of legal process that can emerge out of anarchy in place of the generic "stationary bandit becomes government" theory. But you have to read this blog to discover those theories.

6:49 PM

Accountability Nao! said...

Hi, my first time here, impressive blog. Slightly over my head, which is exactly what I am looking for.

"Feel free to comment or ask questions about any of these or other of my writings here."

1. What is the argument against rule of law?

My country's Charter of Rights and Freedom's preamble begins "Whereas Canada was founded upon principles which recognize the supremacy of God and the rule of law."; the former ship sailed long ago and the latter doesn't seem to apply anymore either. If you can direct me to a critique of the rule of law or give me the quick and dirty I'd appreciate it. I'm becoming suspicious of the rule of law for reasons I can't quite elucidate; I see it as a balaclava somewhat, if that makes any sense, behind which nefarious individuals do nefarious deeds.

2. What do you think of the idea of an Accountable Society, where everything an individual does is recorded and documented?

It would require more pervasive surveillance, but that's a feature.

My society has declined so rapidly that I'm amenable to the idea of Big Sister (Big Brother took early retirement) protecting me from my neighbour. Have you met my neighbour? Total goof, man: hideously dishonest, hostile, rude, ugh, I can't stand him.

Add technology to the equation and imagine how cool it would be knowing the details of every individual you encounter, sort of like a Pop-Up Video Caption: "Cuts people off in traffic, once stole his sister's bike and sold it for crack, cheats on her husband" etc.

We could implant RFID chips in everyone broadcasting their record, so to speak. The best part is we can execute the really nasty folks in society, sort of a Glengarry Glenn Ross scenario where 3rd place is the firing squad, and not wait until they do something really awful to do that.

When I'm debating someone, and they make a series of bad faith or illogical arguments, I get the feeling that person should be banned from talking about grownup issues, and this would be a way to do that. Debate does not exist in nature, of course: if a "Red" made a series of "Red" style arguments, which is to say bad faith or disingenuous or illogical, absent the state's monopoly on violence I would simply kill him and eat him. Yum! Why waste a good source of protein, and why give a known hostile entity a chance to slit my throat?

I look at the costs, and the benefits, and I'm liking the idea more and more.

These questions may sound weird but, hey, you said ask away :-)

12:01 PM

nick said...

Accountability, I'm afraid that if I could pop up dossiers of people I pass on the street, the first kind of people I would avoid would be those who have expressed a taste for cannibalism. But forgetting that and assuming despite the evidence that your comments could be serious, here goes:

1. What is the argument against rule of law?

Those of a group of legal scholars who call themselves legal realists. Most of the creativity, some for good but more for ill, of 20th century high court holdings can be attributed to them.

2. What do you think of the idea of an Accountable Society, where everything an individual does is recorded and documented?

It very much depends on who is doing the surveillance and how the surveillors themselves are made accountable. The current system of government officials themselves laying hidden and peeping at us through robot cameras is very creepy, like having strangers in every park staring at us from behind bushes. A society of the kind David Brin has advocated, where everybody spies on each other, is far more tenable. But either kind of surveillance could lead to legal totalitarianism, i.e. the law dictating everything we do in both our public and (formerly) private life, stripping us of private lives, so I am also greatly in favor of privacy technology such as encryption. And using pseudonyms so that you can safely declare your preference for the flesh of illogical humans.

Have you met my neighbour? Total goof, man: hideously dishonest, hostile, rude, ugh, I can't stand him.

I recommend that if you don't like your neighbors, and you don't have a nuisance or other common law claim, move. Pretty simple really. Freedom of travel and freedom of association are two of our most important unenumerated constitutional rights (ah, the blog name!) and we should exercise them more often.

12:34 PM

nazgulnarsil said...

The problem is that the good kind of (ex ante) legal competition in politics, as opposed to the very harmful (ex post, war, etc.) kinds -- depends on an already existing and fairly secure legal process.

how is a legal process to be secured from the type of politicization we see in the post civil war era of the US? what incentives can be engineered to keep the divided up big sticks from simply cooperating that the big stick wielders can't alter?

I see no historical examples of such, thus I am sympathetic to moldbug's assertion that this remains an unsolved engineering problem rather than a social problem. social forces aren't going to produce an efficient solution.

10:01 PM

nick said...

nazgulnarsil, the Venetian republic was very successful and stable for over 900 years. Here are some ideas for better republics.

In addition to ideas discussed at above-linked articles, another to consider is physically separating different branches of government in different parts of the country, sufficiently that they don't belong to the same social networks. Indeed, they could be forbidden from meeting face-to-face while with members of another branch in office. Also consider forbidding representatives to leave their districts while in office -- they debate and vote remotely.

Also, requiring 2/3 votes to raise taxes is a very good idea.

The District of Columbia should consist of 50 small towns, one per state, so that bureaucrats also don't form such a coherent public-servants vs. selfish private citizens attitude. It should still be federal territory not under the jurisdiction of the state.

Of the ideas I discuss in above-linked posts, some of my favorites are:

* Give federal courts jurisdiction over state constitutional issues, and the court of a distant Commonwealth country (New Zealand would be good) jurisdiction over federal constitutional issues. This lessens incentives of courts to increase the powers of said governments, since they aren't part of them.

* Combine unpredictable elections with short terms of office (Venice did this).

12:38 PM

nazgulnarsil said...

the history of the republic of venice is fascinating. it is certainly a better model than our current form of democracy. at the very least there is an excellent answer to the quip that democracy is the worst form of government except for all the others.

6:30 PM

Post a Comment

Newer Post Home Older Post

Subscribe to: Post Comments (Atom)

Simple theme. Powered by Blogger.